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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,794	03/08/2001	Julianna H. J. Brooks	BLP:106	6723

26818 7590 07/17/2002

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EXAMINER
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MILLER, ROSE MARY

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 07/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/786,794

Applicant(s)

BROOKS ET AL.

Examiner

Rose M Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 45-141 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 45-141 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

- 1) Augment the function of a biologic structure using acoustic resonance;
- 2) Affect a function of a biologic structure using resonant acousto-EM energy;
- 3) Affect a function of a biologic structure using both acoustic resonance and resonant acousto-EM energy;
- 4) Disrupting a function of a biologic structure with acousto-EM resonance;
- 5) Detect/identify a biologic structure with non-resonant acoustic and EM energy
- 6) Detect/identify an inorganic or biologic structure with resonant acoustic and EM energy;
- 7) Determine acoustic resonance of a structure using electromagnetic energy;
- 8) Affect an inorganic structure by applying EM at object in acoustic resonance;
- 9) Detect an inorganic structure by detecting resonant acousto-EM energy; and
- 10) Detect an inorganic structure by inducing acoustic resonance with an acousto-EM signature.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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2. The claims are deemed to correspond to the species listed above in the following manner:

Species (1) corresponds to claims 45-58, 84, 105, and 122-141.

Species (2) corresponds to claims 67-74, 86, 106, and 111.

Species (3) corresponds to claims 59-66, 75-82, 85, and 87.

Species (4) corresponds to claims 83 and 88.

Species (5) corresponds to claims 89-91 and 100-101.

Species (6) corresponds to claims 91-104.

Species (7) corresponds to claims 107-110.

Species (8) corresponds to claims 112-119.

Species (9) corresponds to claim 120.

Species (10) corresponds to claim 121.

The following claim(s) are generic: No claim is generic to all species. Claims 91, 100, and 101 are generic to species (5) and (6) only.

3. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: Species (2) - (10) do not require the augmentation of a biologic structure using acoustic resonance only. Species (1) and (3)-(10) do not require the affectation of a function of a biologic structure through the use of resonant acousto-EM energy alone. Species (1)-(2) and (4)-(10) do not require the use of both acoustic resonance and resonant acousto-EM energy to affect a biologic structure. Species (1)-(3) and (5)-(10) do not require the disruption of a biologic structure through the use of acousto-EM resonance only. Species (1)-(4) and (6)-(10) do not require the identification of a biologic structure with non-resonant energy. Species (1)-(5) and (7)-(10) do not require the identification of a structure with the use of resonant energy. Species (1)-(6) and (8)-(10) do not require the determination of acoustic resonance from the use of electromagnetic energy alone. Species (1)-(7) and (9)-(10) do not require the affectation of an inorganic structure

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through the application of electromagnetic energy to an object in acoustic resonance. Species (1)-(8) and (10) do not require the detection of an inorganic structure by detecting resonant acousto-EM energy. Species (1)-(9) do not require the detection of an inorganic structure by inducing acoustic resonance with the application of an acousto-EM signature.

4. A telephone call was made to Mark Mortenson on 01 July 2002 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

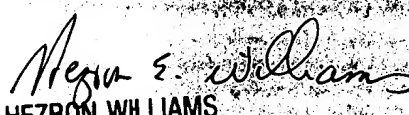
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rose M Miller whose telephone number is 703-305-4923. The examiner can normally be reached on Monday - Friday, 7:30 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 703-305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7382 for regular communications and 703-308-7382 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



RMM  
July 1, 2002



HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800